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BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Upton, Wyoming)

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MM Docket No. 99-57
RM-9460

To: Chief, Allocations Branch

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

COMMENTS AND COUNTERPROPOSAL

I. INTRODUCTION.

1. Mount Rushmore Broadcasting, Inc. ("Mount Rushmore"), by its attorneys, files its Comments and Counterproposal with respect to the Notice of Proposed Rule Making ("NPRM") released by the Allocations Branch on February 12, 1999 (DA 99-319). The NPRM, issued at the request of Windy Valley Broadcasting ("Windy Valley"), proposes to allot Channel 290C1 to Upton, Wyoming.

2. Mount Rushmore respectfully urges the Commission to reexamine its FM allocation policy, so as to better serve the public interest. In conjunction with the Commission's pending rule making on auction procedures for mutually exclusive commercial broadcast license applications and with its notice of inquiry on the broadcast ownership rules (*Notice of Inquiry*, MM Docket No. 98-35 (rel. Mar. 13, 1998)), the Commission should institute a notice of inquiry to determine (1) whether the current FM allocation policy continues to meet the Commission's obligation under Section 307(b) of the Communications Act of 1934 (the "Act"), as amended, and (2) whether the policy has been detrimental to the enhancement of minority ownership of FM

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broadcast stations. In the meantime, the Commission should cease application of its FM allocation policy.

3. Alternatively, if the Commission nonetheless decides to apply its current FM allocation policy here, then Mount Rushmore proposes to allot Channel 290A to Upton, Wyoming, and Channel 288A to Pine Haven, Wyoming, which will provide a first local service to Upton and first local service to Pine Haven.

II. THE COMMISSION SHOULD INSTITUTE A NOTICE OF INQUIRY TO EVALUATE WHETHER THE CURRENT FM ALLOCATION POLICY CONTINUES TO MEET THE COMMISSION'S OBLIGATION UNDER SECTION 307(b) OF THE ACT AND WHETHER THE POLICY HAS BEEN DETRIMENTAL TO THE ENHANCEMENT OF MINORITY OWNERSHIP OF FM BROADCAST STATIONS.

4. The FM Table of Assignments ("FM Table") is intended to allow the Commission to meet its obligation under Section 307(b) of the Act to provide a "fair, efficient and equitable distribution of radio service" to the various states and the communities within them. The Commission has stated that the objectives to be served by the FM Table are:

- * Provision of some service of satisfactory signal strength to all of the country;
- * Provision of as many program choices to as many listeners as possible; and
- * Service of local origin to as many communities as possible.

Second Report and Order, 90 F.C.C. 2d 88, 89 (1982).

5. In its *Second Report and Order*, in response to the growing demand for FM channels, the Commission reevaluated its original FM priorities (adopted in 1961) and adopted new, updated FM priorities to evaluate conflicting allocation proposals. The priorities are:

- "(1) First full-time aural service.

- (2) Second full-time aural service.
- (3) First local service.
- (4) Other public interest matters.

[Co-equal weight would be given to priorities (2) and (3)]."

Second Report and Order, 90 F.C.C. 2d at 91. Under FM priority 4, the Commission considers factors such as population served and the availability of other services. See *Eaton and Sandy Springs, Georgia, et al.*, 6 FCC Rcd 6580, 6585 (Mass Media Bur. 1991).

6. Mount Rushmore urges the Commission to again reevaluate and update its FM priorities. In the current environment of high demand for and low supply of FM channels everywhere, the existing FM allocation policy no longer meets the Commission's obligation under Section 307(b), nor serves the objectives of the FM Table. In particular, the Commission's application of the current FM priorities to conflicting allocation proposals have resulted in inadequate attention to local service and the needs of smaller, rural communities.

7. Indeed, in cases involving conflicting proposals, the existing FM priorities favor large, urban areas over smaller, rural communities. For example, under the Commission's current FM allocation policy, in cases involving a choice between second aural and first local services or between two first local services, preference would be given to the larger, more populous community, leaving the smaller communities underserved. See *Second Report and Order*, 90 F.C.C. 2d at ¶ 11; *St. Marks and Woodville, Florida*, 12 FCC Rcd 11,957 (Alloc. Branch 1997).

8. The institution of auctions for contested FM cases is another recent development that makes it appropriate to reexamine the Commission's FM allocation policy. Now that the auction process will be used to select the party that will use a particular channel, it is more

important than ever to make sure that channels are allocated to the appropriate communities. The Commission's system of adding channels through petitions by parties such as Windy Valley should be suspended and reexamined in light of current conditions, including the new auction procedure. Accordingly, the Commission should institute a notice of inquiry to determine whether its current FM allocation policy meets the Commission's obligation under Section 307(b) of the Act.

9. In addition, the Commission's existing FM allocation policy may be detrimental to the enhancement of minority ownership of FM broadcast stations because the current policy favors incumbent station owners that have the knowledge, resources and financial means to institute a petition for rule making to amend the FM Table, to apply for a construction permit, and then to participate in an auction for the new FM station.

10. In his speech to the NAB Convention in April 1998, Chairman Kennard reported that he was "dismayed to see that minority broadcast ownership was a mere 3.1% in 1996. This year that's dropped to 2.8%." With respect to radio stations, in particular, the number of minority-owned commercial radio stations declined from 312 in 1995 to 284 in 1996/97. *See* Minority Commercial Broadcast Ownership in the U.S., a report of the Minority Telecommunications Development Program, National Telecommunications and Information Administration (Aug. 1997).

11. The Commission has a statutory obligation under Section 309(j) of the Act as well as an historic commitment to encourage minority participation in the telecommunications industry. Indeed, in his recent speech at the NAB Convention, Chairman Kennard issued a challenge to the

broadcast industry to “develop ideas to promote opportunity for ownership by minorities and women within the broadcast industry.”

12. Accordingly, Mount Rushmore proposes that the Commission institute a notice of inquiry to determine whether its current FM allocation policy has been detrimental to the enhancement of minority ownership of FM stations and to explore ways to foster opportunities in broadcast ownership for minorities and women. The Commission has an obligation to act now and, in the interim, to cease application of its current FM allocation policy.

III. CHANNEL 290A, UPTON, WYOMING AND CHANNEL 288A, PINE HAVEN, WYOMING IS THE PREFERRED ALLOCATION.

13. In the event the Commission decides to proceed with this particular rule making, Mount Rushmore proposes the allotment of Channel 290A to Upton, Wyoming and Channel 288A to Pine Haven, Wyoming, which will provide a first local service to each community. Mount Rushmore’s proposal is the preferred allocation because it would provide first local service to two communities, whereas Windy Valley’s proposed allotment of Channel 290C1 to Upton, Wyoming would provide a first local service to only one community. As demonstrated in the Engineering Statement attached hereto, Channel 290A may be assigned to Upton, Wyoming and Channel 288A to Pine Haven, Wyoming in full compliance with Section 73.202(b) of the Commission’s Rules. If Mount Rushmore’s proposal is adopted, Mount Rushmore will apply for construction permits for Channel 290A in Upton and Channel 288A in Pine Haven.

14. Like Upton, Pine Haven is recognized as a community by the United States Census Bureau. Attached is a print-out of the Census Bureau’s digest on Pine Haven. Pine Haven presently has no broadcast outlet.

15. Where, as here, the first two FM priorities are not implicated, the Commission must be guided by FM priorities 3 and 4. As proposed by Mount Rushmore, the allotment of Channel 290A to Upton, Wyoming would provide a first local service to Upton and the allotment of Channel 288A to Pine Haven, Wyoming would provide a first local service to Pine Haven. Windy Valley's proposal to allot Channel 290C1 to Upton, Wyoming would provide a first local service to that community. While both proposals fulfill FM priority 3, Mount Rushmore's proposal provides a first local service to two communities rather than just one. Further, the combined populations of Upton and Pine Haven (1,121) is greater than the population of Upton alone (980). Mount Rushmore's proposal, therefore, would result in more efficient use of the channels. Accordingly, the public interest favors the grant of Mount Rushmore's proposal which would provide new or additional service to the most people.

IV. CONCLUSION.

16. For the reasons stated above, Mount Rushmore respectfully requests that the Commission institute a notice of inquiry to determine (1) whether the current FM allocation policy continues to meet the Commission's obligation under Section 307(b) of the Act, and (2) whether the policy has been detrimental to the enhancement of minority ownership of FM broadcast stations. In the meantime, the Commission should cease application of its FM allocation policy. If, however, the Commission nonetheless decides to apply its current FM allocation policy here, then Mount

Rushmore respectfully requests that the Commission adopt its Counterproposal and allot Channel 290A to Upton, Wyoming and Channel 288A to Pine Haven, Wyoming.

Respectfully submitted,

Mount Rushmore Broadcasting, Inc.



Thomas J. Hutton
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Its Attorneys

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April 5, 1999

WAS1-379246

U.S. Census Bureau

U.S. Gazetteer

Select one of the following matches to your query to look at that place in the Tiger Map Browser or retrieve 1990 Census tables.

You can search this index. Type the keyword(s) you want to search for:

- **Pine Haven, WY** (town)
Population (1990): 141
Location: 44.34882 N, 104.81008 W
Zip Code(s): 82721
Browse Tiger Map of area.
Lookup 1990 Census STF1A, STF3A tables.

*Note: This dataset is derived from the Census GICS and does not contain unincorporated place names.

For other geographic entities, try searching the [USGS Geographic Names Information System](#) .
The [US Gazetteer Place and Zipcode files](#) used in this service is available for downloading.

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**ENGINEERING STATEMENT ON BEHALF OF
MOUNT RUSHMORE BROADCASTING, INC
IN SUPPORT OF COMMENTS AND A COUNTERPROPOSAL
UPTON, WYOMING CHANNEL 290 C1
RM-9460 AND MM DOCKET NO. 99-57**

APRIL 3, 1999

**ENGINEERING STATEMENT ON BEHALF OF
MOUNT RUSHMORE BROADCASTING, INC
IN SUPPORT OF COMMENTS AND A COUNTERPROPOSAL
UPTON, WYOMING CHANNEL 290 C1
APRIL 3, 1999 PAGE 1**

Owl Engineering, Inc. has been retained by Mount Rushmore Broadcasting, Inc. (hereafter "Rushmore") to prepare this engineering statement in support of comments and a counterproposal in reference to RM-9460, MM Docket No. 99-57 for the creation of a new Class C1 channel in Upton, Wyoming. An alternative option is advanced with these comments.

Below is a summary of the proposed amendments to the FM Table of Allotments, FCC Rule Section 73.202(b) in this proceeding.

Location	Present	RM-9460	Counterproposal
Upton, Wyoming	-----	290C1	290A
Pine Haven, Wyoming	-----	-----	288A

Based on the 1990 Census data, Pine Haven, Wyoming has a population of 141 people and is a populated place. The reference coordinates for this counterproposal site is:

44° 20' 56" North Latitude
104° 48' 36" West Longitude

Using these reference coordinates the results of an allocation study shows that a new Class A facility would meet all the required spacing and separation requirements of the FCC Rules and provide a new first aural service to Upton and Pine Haven, Wyoming.

**ENGINEERING STATEMENT ON BEHALF OF
MOUNT RUSHMORE BROADCASTING, INC
IN SUPPORT OF COMMENTS AND A COUNTERPROPOSAL
UPTON, WYOMING CHANNEL 290 C1
APRIL 3, 1999 PAGE 2**

***** FM CHANNEL SPACING STUDY *****

Job title: FM Study Pine Haven, Wyoming
Proposed latitude: N 44 20 56.00
Proposed longitude: W 104 48 36.00
Database file name: C:\FCCData\Fm990328
Use pre-1989 Class A spacings?: N

Proposed channel: 288A

CH	Call	Record	City	ST	Status	Bear.	Dist.	Reqd. Dist.	Result
286C1	KAWK	19409	Custer	SD	LIC	121.9	125.9	75.0	50.9
290C1		19746	Upton	WY	ADD	152.3	31.5	75.0	-43.5 ***
288A	ALLOTM	20519	Mills	WY	VACANT	217.3	209.6	115.0	94.6

***** End of channel 288 study *****

*** See Engineering Statement

The allocation indicates a short-spaced condition between the proposed Class A in Pine Haven and the proposed Class C1 in Upton. However, the counterproposal changes the Class C1 in Upton with a Class A facility and the required distance separation distance for Class A to Class A facilities removed by two channels is 31 km. The distance indicated in the allocation study is 31.5 km, which satisfies the minimum distance separation requirements.

**ENGINEERING STATEMENT ON BEHALF OF
MOUNT RUSHMORE BROADCASTING, INC
IN SUPPORT OF COMMENTS AND A COUNTERPROPOSAL
UPTON, WYOMING CHANNEL 290 C1
APRIL 3, 1999 PAGE 3**

Coverage Considerations

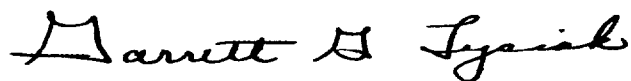
The **Rushmore** counterproposal was examined to determine if a Class A facility located at the reference coordinates would comply with FCC Rule Section 73.315 regarding minimum signal coverage requirements for Pine Haven, Wyoming. The 70 dbu contour is depicted in engineering Exhibit E-1. As can be seen from this exhibit the community of Pine Haven, Wyoming is completely served by a signal of 70 dbu or greater.

The **Rushmore** counterproposal was then examined to determine if a Class A facility located at the reference coordinates would comply with FCC Rule Section 73.315 regarding minimum signal coverage requirements for Upton, Wyoming. The 70 dbu contour is depicted in engineering Exhibit E-2. As can be seen from this exhibit the community of Upton, Wyoming is completely served by a signal of 70 dbu or greater.

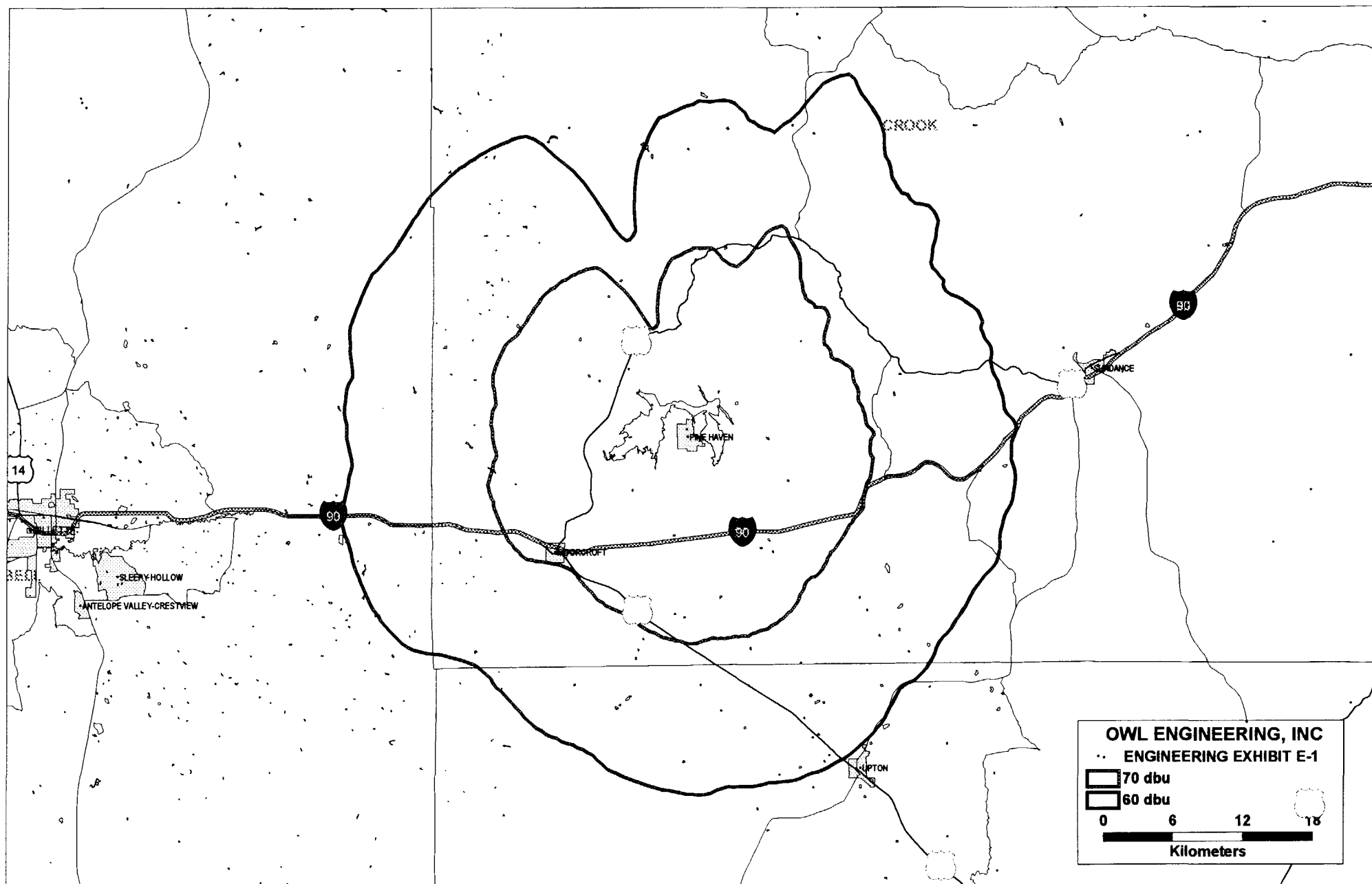
The F(50,50) metric curves of Figure 1 of Section 73.333 of the Commission's Rules were used to calculate the distance to the 70 dbu contour along the eight standard 45-degree spaced radials.

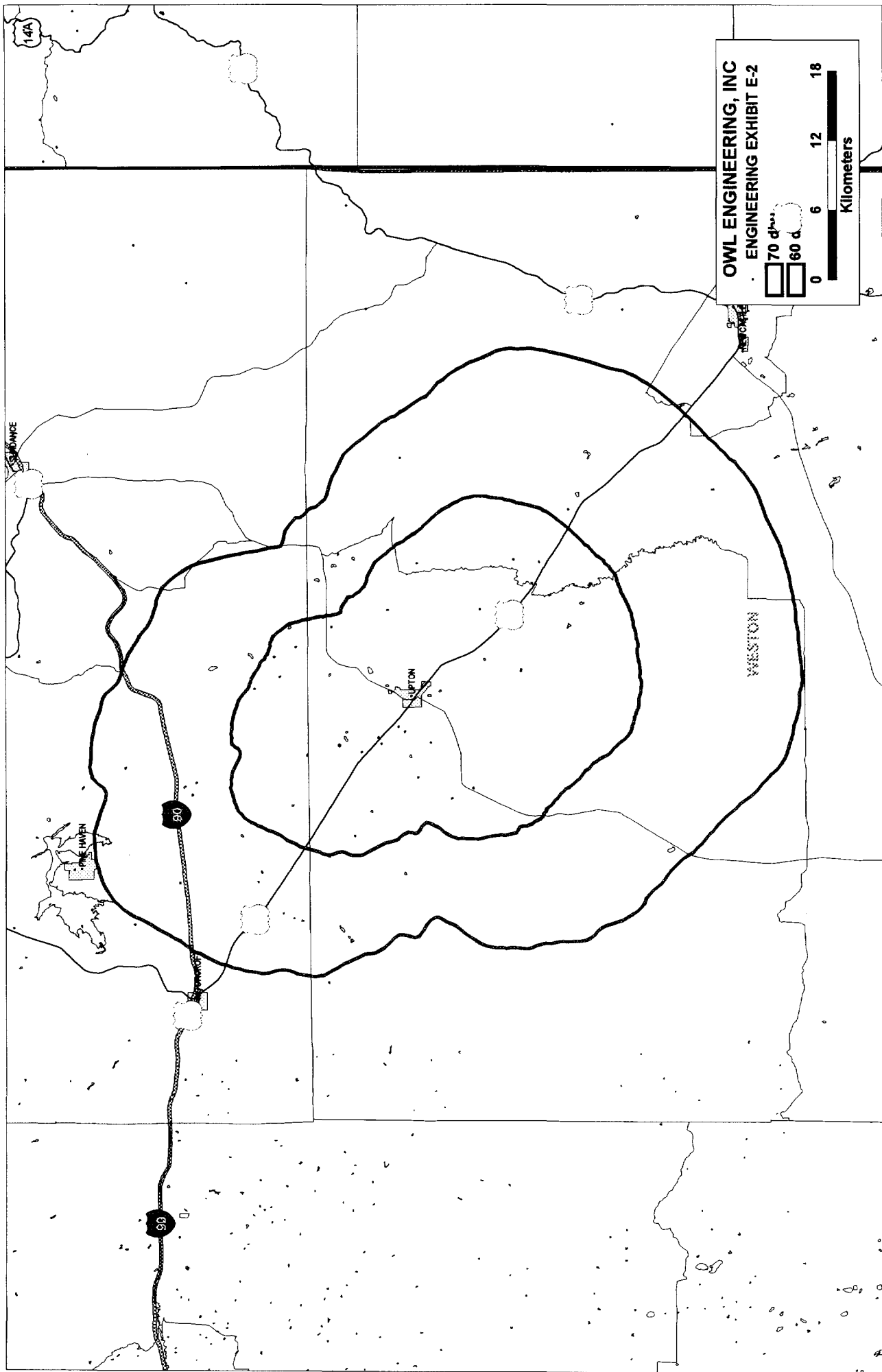
The **Rushmore** counter proposal would provide a new aural service to both Upton and Pine Haven, Wyoming.

Respectfully Submitted,



Garrett G. Lysiak, P.E.

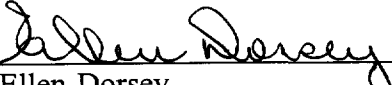




CERTIFICATE OF SERVICE

I, Ellen Dorsey, an employee of Holland & Knight LLP, hereby certify that on April 5, 1999, a copy of the foregoing Comments and Counterproposal of Mount Rushmore Broadcasting, Inc. was served by first class U.S. Mail, postage prepaid, to the following:

Victor A. Michael, Jr.
President
Wind Valley Broadcasting
6807 Foxglove Drive
Cheyenne, WY 82009


Ellen Dorsey